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Paper No. 6

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
Campbell et al. : DECISION DISMISSING PETITION
Application No. 09/483,084 : AND REFUSING STATUS
Filed: 14 January, 2000 : 37 CFR 1.47(a)
Attorney Docket No. 00981-0007-US00 :
:

This is a decision on the petition filed on 24 May, 2000 (certificate of mailing date 22 May, 2000), which is being treated as a petition to accord the above-referenced application a filing date of 14 January, 2000, with page 4 of the specification as a part of the original disclosure, and a petition under 37 CFR 1.47(a).¹

The petitions are **DISMISSED**

Petitioner is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.182," and/or under 37 CFR 1.47(a), and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time under 37 CFR 1.136(a) are permitted.

On 14 January, 2000, the application was filed, without an executed oath or declaration, with 24 pages of specification (pages 1-3 and 5-25) including 52 claims, on 14 January, 2000, without an executed oath or declaration.

On 22 March, 2000, Initial Patent Examination Division mailed a "Notice of Omitted Items" and a "Notice to File Missing Parts of Application" stating that Page 4 of the specification appeared to have been omitted from the drawings, that

¹A petition under 37 CFR 1.47(b) is inappropriate in this instance since all but one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign, accordingly the petition will be treated as a petition under 37 CFR 1.47(a).

an executed oath or declaration as required by 37 CFR 1.63 was not included, and that the basic filing fee, additional claim fees, an executed oath or declaration, and a surcharge for their late filing, was required. A two (2) month period for reply was set.

On 24 May, 2000 (certificate of mailing date 22 May, 2000), petitioners submitted, *inter alia*:

- a. page 4 of the specification;
- b. a petition under 37 CFR 1.182 requesting that omitted page 4 be accorded a filing date of 14 January, 2000;
- c. a declaration signed by joint inventor Campbell on behalf of himself and joint inventor Omilinsky;
- d. a "Petition under 37 CFR 1.47(b)" including a statement of the last known address of non-signing joint inventor Omilinsky;
- e. a declaration by Mary S. Consalvi.

Petition to Accord a Filing Date of 14 January, 2000

Petitioners admit that "part of page 4 was not copied and submitted with the application as filed." Petitioners request that the application including page 4 be accorded a filing date of 14 January, 2000. In the alternative, petitioners request that the application as filed be accorded a filing date of 14 January, 2000, and that page 4 be accorded a filing date of 19 May, 2000. Page 4 must be accorded a filing date of 24 May, 2000, however, which is the date of receipt in the Office rather than the date of 19 May, 2000, which is the date of the certificate of mailing under 37 CFR 1.8(b), however, because the certificate of mailing procedures may not be used for purposes of obtaining a filing date.²

As petitioners have admitted that page 4 was not included with the application as filed, the application as filed on 14 January, 2000, with 24 pages of specification including 51 claims, is accorded a filing date of 14 January, 2000. Page 4 of the specification is accorded a filing date of 24 May, 2000. Petitioners must submit a new oath or declaration covering page 4, filed on 24 May, 2000, with any renewed petition.

Petition under 37 CFR 1.47(a)

Petitioner states that joint inventor Barry Omilinsky has refused to sign the declaration for the above-identified application.

²37 CFR 1.8(a)(2)(I)(A).

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (2) above.

In regards to item (1), petitioner has not provided sufficient proof that a copy of the application (specification including claims, drawings, if any, and Declaration) was sent or given to the non-signing inventor for review.³ The declaration of Mary S. Consalvi states that joint inventor Omilinsky refused to sign the declaration "on or about March 6, 2000, when he received the documents which had already been signed by co-inventor Campbell." Petitioner has not stated whether the application as filed was sent or given to the non-signing inventor, who mailed or sent the application papers, and when the papers were sent or given to the non-signing inventor. Petitioner should provide a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Additionally, petitioner must provide proof that the non-signing inventor refuses to sign the Declaration.⁴ If there is a written refusal, petitioner must provide a copy of the written refusal. If the refusal was made orally to a person, that person must provide details of the refusal in an affidavit or declaration of facts.

In regards to item (2), petitioner must provide a supplemental oath or declaration covering page 4 filed on 24 March, 2000, as stated above.

Counsel's deposit account, No. 08-3038, will be charged the basic filing and additional claim fees as well as the surcharge for late filing and fees for the petitions under 37 CFR 1.182 and 1.47(a).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents and Trademarks

³MPEP 409.03(d).

⁴Id.

Application No. 09/483,084

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Telephone inquiries specific to this matter should be directed to Petitions Attorney
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